

REMARKS

This application, as amended herein, contains claims 1-8, 10-20 and 36-46 and 48-50. Claims 9 and 47 have been canceled herein.

Claims 4 and 10-12 were objected to because they recite a temperature sensitive material. The Examiner stated that claim 1 does not include this limitation. This is precisely why claims 4 and 10-12 are dependent claims and serve to further limit claim 1, which is directed to a display medium. The undersigned sees no reason why a temperature sensitive display medium may not include a temperature sensitive display material. Thus, it is respectfully submitted that there is no basis to object to claims 4 and 10-12. In fact, the Examiner has stated no statutory grounds for doing so. Thus, it is respectfully submitted that the objection to claims 4 and 10-12 should be withdrawn.

Claim 13 was rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. This reject is simply not understood, and is respectfully traversed. First the Examiner is referred to page 8, lines 12-17 (the paragraph at the middle of page 8), and to the paragraph bridging pages 17 and 18 of the specification (page 117, line 16 to page 18, line 5). There is ample teaching on having an image display process which is not reversible with a change of temperature. Indeed, original claim 13, which is part of the disclosure, so states. However, perhaps the

Examiner is referring to the "at least one" language used in claim 13 as amended. To avoid any controversy on this point, claim 13 has been amended to remove that language. Thus, it is respectfully submitted that there is no basis for rejecting claim 13, as amended herein, under 35 U.S.C. 112, and it is respectfully requested that the rejection be withdrawn.

Claims 49-50 were rejected because the Examiner has found insufficient antecedent basis for the limitation. This rejection is simply not understood, as there are various apparatus described in the specification, and the first and second recitations are merely used to distinguish two of those apparatus. However, to avoid controversy, this language has been removed from claims 49 and 50. Thus, in view of the clear teaching in the specification of apparatus for reading a symbol (such as, for example, a bar code scanner, clearly disclosed in the specification) and apparatus for processing the product (such as, for example, a microwave oven, also clearly disclosed in the specification) it is respectfully submitted that there is more than sufficient antecedent basis for claims 49-50, and it is respectfully requested that the rejection be withdrawn.

Claims 9 (the only claim specifying a background material) and claim 47 have been canceled.

Claims 1-3, 10, 12, 13, 18, 19, 20, 26, 47 and 48 were rejected under 35 U.S.C. 102(e) as being anticipated by Prusik et al. Further claims 1-2, and 4-15 were rejected

under 35 U.S.C. 102(b) as anticipated by Matsunami et al. Claims 4-8 and 36-39 were rejected under 35 U.S.C. 103(a) as unpatentable over Prusik et al. in view of Dean. Claims 14-16 and 44-46 were rejected under 35 U.S.C. 103(a) as unpatentable over Prusik et al. in view of Cooley et al. Finally, claims 3 and 16-20 were rejected as unpatentable over Matsunami et al. in view of Cooley et al. These rejections are respectfully traversed.

Claim 1, as previously amended, recites a temperature sensitive display medium for displaying a first image within a first temperature range and a second image within a second temperature range, wherein at least one image provides information about a condition of a product to which the display medium is attached. The condition is indicative of how to further process the product. Applicant's invention, as set forth in claim 1, thus provides a specific technical advantage, in that the condition of the product, based on its thermal history, is determined, and thus further, appropriate processing of the product can take place.

The central issue herein is that the Examiner has failed to give any weight to the nature of the information displayed. Instead, the Examiner has cited case law for the proposition that very little weight is attached to an intended field of use of a product. It is respectfully submitted that this case law refers to a prior art structure, where the claim recites merely, as an example, "for use in cooking". This case law is not pertinent to the issues presented herein.

The issue presented herein deals with a structure for displaying particular information, and the nature of the information displayed. Information displayed can and does define a different and unique structure. For example, it has been held that a digital computer programmed in a new and unobvious way is a physically different from the machine without the program, and is therefore patentable. *In re Bernhart*, 417 F.2d 1395, 1400, 163 U.S.P.Q. 611 (CCPA 1969). The court said "The fact that these physical changes are invisible to the eye should not tempt us to conclude that the machine has not changed."

In the instant case, the changes are in fact visible to the eye. The information has real value, and defines a different product, specifically one that has information thereon on how that product is to be processed. This is very similar to the programming of a digital computer where what the program provides is information on what the machine is to do next, or in successive steps.

In view of the above, it is respectfully requested that the Examiner reconsider the position taken on all of the claims, giving due weight to the nature of the information presented, from the most general statement in claims 1 and 18, to the specific nature of this information in claims 36- 46 and 48. It is respectfully submitted that if due weight and consideration are given to the recitations of the nature of the information displayed in these claims, the Examiner, under existing case law, must find the claims to be directed to patentable subject matter. These remarks pertain to the rejections of claims

1-3, 10, 12, 13, 18, 19 20, 36, 47 and 48 (based on Prusik et al.), the rejection of claims 1-2 and 4-15 (based on Matsunami et al.) and claims 3 and 16-20 (based on Matsunami et al. in view of Cooley et al.)

Claim 18 has been amended in a manner analogous to that of claim 1. For the reasons set forth above with respect to claim 1, and for the reasons set forth below, it is respectfully submitted that claim 18, and claims 19 and 20, which depend therefrom, are also directed to patentable subject matter.

With respect to the rejection of claims 3 and 16-20, as unpatentable over the combination of Matsunami et al. in view of Cooley et al., it is again respectfully submitted that Cooley et al. adds nothing of significance to Matsunami et al. Cooley et al. is directed to a tampered-indicating and authenticating label. The thrust of Cooley et al. is to be certain that the label has not been tampered with or removed from an article to which it is attached. Cooley et al. does not teach or suggest a display medium as set forth in claim 1, from which claims 3 and 16-20 depend, because Cooley et al. is not concerned with further processing of the product. For the reasons set forth above with respect to claim 1, it is submitted that claims 3 and 16-20 are also patentable over the art of record.

Claims 36-50, which all depend either directly or indirectly from claim 1, present a number of features of Applicant's invention not shown or suggested in the art of

record. It is noted that most of the features of Applicant's invention recited in these claims all take advantage of the unique property of the display medium having at least one image that is representative of the condition of the product, and thus indicative of what further processing is appropriate for the product. Thus, the symbol may be read, and the product may be efficiently processed in accordance with the condition represented by the symbol. For the reasons set forth above with respect to claim 1, and because of the specific recitation within each of the newly added claims, it is submitted that claims 36-50 are all directed to patentable subject matter.

Thus, reconsideration and allowance of this application are respectfully requested. In view of the allowable nature of the subject matter of all of the claims, if the Examiner cannot issue an immediate allowance, it is respectfully requested that the Examiner contact the undersigned to resolve any remaining issues.

In order to preserve the pendency of this application, and to provide sufficient time for the examiner to consider this paper, a Notice of Appeal is filed herewith. The filing of the Notice of Appeal is not intended to remove jurisdiction from the Examiner to consider this paper, but instead to provide for due consideration by the Examiner, for time in which the applicant can consider action taken by the Examiner, and what further action the applicant may wish to take.

A Change of Correspondence Address is also submitted herewith.

Applicant petitions for an extension of time of three months in which to file this paper, and the attached Notice of Appeal. The fee of \$950 is included in the attached check in the amount of \$1,280, which also covers the fee for the attached Notice of Appeal.

Respectfully submitted,

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Date